

Decision **PROPOSED DECISION OF ALJ COLBERT** (Mailed 7/11/2014)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the Los Angeles County Metropolitan Authority for an Order authorizing the construction of two-track at-grade crossings for the Crenshaw/LAX Transit Corridor Project Light Rail Line across Eucalyptus Avenue, across Centinela Avenue, and a pedestrian grade-separated crossing in the City of Inglewood.

Application 12-11-018
(Filed November 16, 2012)

**DECISION DENYING THE PROTEST OF THE CITY OF INGLEWOOD AND
AUTHORIZING THE LOS ANGELES COUNTY METROPOLITAN
TRANSPORTATION AUTHORITY TO CONSTRUCT TWO-TRACK AT-GRADE
RAIL CROSSINGS FOR THE CRENSHAW/LAX TRANSIT CORRIDOR
PROJECT LIGHT RAIL LINE ACROSS EUCALYPTUS AVENUE, ACROSS
CENTINELA AVENUE AND A PEDESTRIAN GRADE-SEPARATED
CROSSING IN THE CITY OF INGLEWOOD**

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1. Summary

This decision denies the protest of the City of Inglewood and grants the Los Angeles County Metropolitan Transportation Authority authorization to construct three crossings: (i) a two-track at-grade track crossing at Eucalyptus Avenue, (ii) a two-track at-grade track crossing at Centinela Avenue, and (iii) a pedestrian grade separated crossing near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line all in the City of Inglewood.¹

2. Parties

The Los Angeles County Metropolitan Transportation Authority (LACMTA or Applicant) was created by the California State Legislature in order to design, build, and operate an efficient and safe transportation system in Southern California and to improve public transportation in the region. It is the successor agency to the Southern California Rapid Transit District (SCRTD) and the Los Angeles County Transportation Commission (LACTC).

Faithful Central Bible Church (FCBC) is a 501(c)(3) non-profit church established in Inglewood, California, in 1936. It currently has over 13,000 members who attend church services and other religious and community

¹ All references to Rules in this Decision are to the Commission's Rules of Practice and Procedure, which are available on the Commission's website at:
http://docs.cpuc.ca.gov/word_pdf/RULES_PRAC/70731.pdf

events and programs at its facilities. The Church Campus is adjacent to Eucalyptus Avenue, and is bisected by the existing rail line.

The City of Inglewood (Inglewood or City) is a city in southwestern Los Angeles County, southwest of downtown Los Angeles. It is a municipal corporation, incorporated on February 14, 1908 with a population of approximately 110,000.

3. Factual and Procedural Background

On November 16, 2012 LACMTA filed Application (A.) 12-11-018 with the Commission for an order authorizing the construction, maintenance, and operation of three crossings: (i) an at-grade track crossing at Eucalyptus Avenue, (ii) an at-grade track crossing at Centinela Avenue, and (iii) a pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line (Crenshaw/LAX Project or Project). Each of the proposed crossings is located in the City of Inglewood.

LACMTA has constructed and is operating several light rail transit and subway lines in Southern California, including the Metro “Blue,” “Green,” “Red,” “Gold” and “Exposition” lines.² The proposed Crenshaw/LAX Project is an 8.5 mile rail line that would begin at the southern terminus of the Metro Green Line and follow existing railroad right-of-way adjacent to Aviation Boulevard and Florence Avenue northeast to Crenshaw Boulevard.³ From Crenshaw the line would travel north within the Crenshaw Boulevard right-of-way to the Exposition/Crenshaw Station located adjacent to the

² LACMTA Application, A.12-11-018 at 2.

³ *Id.* at 3.

Metro Exposition Line.⁴ The project will include six transit stations, park-and-ride lots and maintenance facilities.

On December 21, 2012, FCBC filed a protest to the Application. On December 31 the City of Inglewood filed a protest.

The FCBC campus is adjacent to Eucalyptus Avenue, and is bisected by the existing rail line/right of way in which the Crenshaw/LAX Project will operate. FCBC parishioners park their vehicles in a parking structure on the south side of the rail line, and then travel on foot across the currently inactive rail line to reach church services held at the Tabernacle, on the north side of the rail line. Approximately 4,000 people attend FBCB church services at the Tabernacle on Sundays.

Prior to, and in anticipation of LACMTA filing an Application for this project, FCBC filed a Complaint, Case (C.) 12-07-008, against LACMTA. In its complaint, FCBC expressed concerns about the impact of increased train traffic on pedestrians accessing the at-grade crossing at Eucalyptus Avenue. FBCB asserted that an at-grade crossing would inadequately protect pedestrians. Instead, they argued that a “trenched” crossing would be economically viable and would offer sufficient protection to pedestrians.

A prehearing conference (PHC) in C.12-07-008 was held on October 1, 2012. Motivated by comments of the assigned Administrative Law Judge (ALJ) at the PHC, the parties discussed and proposed plans for a mid-block pedestrian underpass to be constructed by LACMTA and to be operated and controlled by FCBC. On October 26, 2012, FCBC and LACMTA

⁴ LACMTA Application, A.12-11-018 at 2.

filed a Joint Brief in C.12-07-008, requesting that the Complaint be held in abeyance, pending the parties' negotiations and LACMTA's submission of applications regarding the crossings to the Commission. The Commission granted that request by a ruling issued February 27, 2013.

As previously indicated, on November 16, 2012, LACMTA filed the instant application. Although FCBC and LACMTA had already begun settlement negotiations, FCBC filed a protest to the application in order to preserve their rights should negotiations fail. The protest raised the same issues and concerns expressed in FCBC's complaint. The City of Inglewood also filed a protest. A protest was also filed by the Environmental Justice for Light Rail Coalition. The protest was rejected as it was not timely filed. The Commission's Safety and Enforcement Division did not protest the application.

In its protest to the Application, Inglewood pointed out that the proposed Crenshaw/LAX Project will operate on a previously inactive rail line that would be converted to an extremely active light rail line serving a number of designated areas including the cities of Los Angeles, Inglewood, Hawthorne and El Segundo, as well as certain unincorporated portions of Los Angeles County.⁵ Inglewood argues that LACMTA's application is a clear breach of the Commission's stated policy to reduce the number of at-grade crossings and the related safety risks. Inglewood claims that the level of train traffic on the Crenshaw/LAX Project would essentially cut the city in half. Inglewood asserts that Centinela Avenue and Florence Avenue are critical parts of the City's core

⁵ City of Inglewood Protest to Application at 2.

downtown area and critical to its economic well-being.⁶ The city points out that Centinela Avenue is used frequently by the Police Department and Los Angeles County Fire to access Florence Avenue and the City's southern half. Inglewood states that an at-grade crossing at the intersection of Centinela Avenue and Florence Avenue will without question result in a significant reduction in emergency response time as both streets are critical emergency vehicle response routes.⁷

Inglewood also claims that the proposed crossings are unsafe because of their close proximity to two schools. The City also argues that the crossing will create a potentially deadly vehicle environment for the many buses, commercial and passenger vehicles that use the Centinela/Florence Avenue intersection. Inglewood asserts that LACMTA has failed to meet the high bar required to rebut the Commission's strong presumption that grade-separated crossings are the preferred method for rail crossings, or identify factually similar cases or circumstances where the Commission has granted authority to install new at-grade crossings.⁸

On January 10, 2013, LACMTA filed a reply to the protests to the Application. As detailed below, LACMTA and the FCBC have reached a mutually agreed upon settlement which addresses the issues raised in the FCBC protest. The protest of the Environmental Justice for Light Rail Coalition was rejected as not being timely filed. Only the City's protest remains contested, thus, only LAMCTA's reply to that protest will be addressed.

⁶ *Id.* at 10.

⁷ City of Inglewood Protest to Application at 10.

⁸ *Id.*

LACMTA argues that the positions taken in Inglewood's protest are not well-founded. LACMTA states that the determination of whether to use at-grade or grade-separated alignments at all grade crossings for the Crenshaw/LAX Project was based on an application of the "Policy for Grade Crossings for Light Rail Transit," and LACMTA reached the decision to construct the at grade crossings only after a number of studies were completed. LACMTA states that these studies were shared with the community, including the City of Inglewood, via public meetings and dialogue.⁹

LACMTA asserts that each of the at-grade crossing designs along the Crenshaw/LAX Project route was individually evaluated for pedestrian and motorist safety through the "Rail Crossing Hazard Analysis" process mandated by the Commission's General Order 143-B. LACMTA contends that these evaluations included site visits, engineering evaluations, and extensive participation by Commission and City staff, members of the public and stakeholder groups.¹⁰ As a result of these evaluations, design modifications and mitigation measures were included in the final crossing designs.¹¹

LACMTA asserts that, contrary to the City's assertions, the presence of schools, churches, businesses, and other civic and private institutions was in no way disregarded during the crossing design and evaluation process and that consideration of these factors and their needs was an integral part of the review process.¹² LACMTA states that its records reveal at least seven meetings with

⁹ LACMTA Reply to Protests at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 8.

Commission and/or City staff to discuss the Centinela Avenue crossing, as well as at least three joint field site visits/diagnostics trips to discuss and evaluate the crossing, in addition to extensive correspondence between LACMTA, the Commission and Inglewood regarding all the issues identified in the City's Protest. LACMTA claims that the result of this process has been confirmation that the proposed design of the at-grade crossing at Centinela Avenue will be safe for vehicles and pedestrians, and that grade-separating the crossing is impracticable.¹³

LACMTA argues that public safety was the foremost consideration when it evaluated whether a grade separated crossing at Centinela Avenue was practicable but that such decisions are not made in a vacuum.¹⁴ It states that it also had to consider the financial implications of grade separation on the project's costs. LACMTA claims that a final Preliminary Engineering Cost Estimate put the cost of constructing a grade-separation at \$42,300,000. LACMTA states that in the context of a publicly-funded project subject to many competing needs, costs of this magnitude for grade-separating the Centinela crossing are prohibitive, unless Inglewood proves able to secure an additional source of funds.¹⁵

On February 19, 2013, A.12-11-018 was assigned to an ALJ. A PHC was scheduled for April 9, 2013. In anticipation of the PHC, an agreement was reached between LACTMA and FCBC on the terms of a private below grade crossing and easement agreement defining rights and responsibilities for

¹³ LACMTA Reply to Protests at 8.

¹⁴ *Id* at 9.

¹⁵ *Id*.

construction, operation, and maintenance of a pedestrian undercrossing and related matters; and a Settlement and Release Agreement (Settlement Agreement) to settle issues presented by FCBC in this proceeding and in C.12-11-018.

The proposed settlement was discussed at the April 9, 2013 PHC. Parties represented at the PHC included LACMTA, FCBC, the City of Inglewood, and the Commission's Safety and Enforcement Division. LACMTA and FCBC stated that they were satisfied with the proposed terms of the Settlement Agreement. The representative for the City of Inglewood did not state any particular opposition to the proposed Settlement Agreement, but stated that he would need to consult further with his client. The representative for Inglewood reiterated that the issues raised in the City's protest to the Application remained unresolved.

On May 8, 2013, LACMTA and FCBC filed a Joint Motion for Interim Decision approving the Settlement Agreement. On June 4, 2013, C.12-07-008 was dismissed.¹⁶ On June 13, 2013, LACMTA and FCBC filed a Supplement to Joint Motion for Interim Decision Approving Settlement Agreement (Supplement), which also included an executed copy of the Settlement Agreement. The submitted changes in the Supplement slightly modified the version submitted with the Joint Motion on May 8, 2013.

On June 14, 2013, a second PHC was held in the instant proceeding. At the PHC a representative for LACMTA indicated that they and FCBC were

¹⁶ See Decision 13-05-038.

cooperating and that the Settlement Agreement was close to final approval.¹⁷ The City continued to maintain that the proposed crossings presented a number of safety issues for pedestrian and vehicle traffic as well as negative impacts on the City's ability to provide public services.¹⁸ The City reiterated its contention that fully grade separated crossings were preferable.¹⁹ An Additional Supplement (Additional Supplement) to the Joint Motion was filed on August 12, 2013.

On October 3, 2013, the assigned Commissioner issued a Scoping Memo and Ruling (Scoping Memo). The Scoping Memo set forth the procedural schedule (including briefing schedule) and set the scope of the instant proceeding. On October 31, 2013, the Commission issued Decision (D.) 13-10-061 this approved the Settlement Agreement between LACMTA and FCBC. On November 19, 2013, LACMTA filed their opening brief and their reply brief on December 2, 2013. The City filed its opening brief on November 21, 2013, and its reply brief on December 2, 2013.

As briefly described, *supra*, LACMTA filed an application on November 16, 2012, as amended, for an order authorizing the construction, maintenance, and operation of three crossings: (i) an at-grade track crossing at Eucalyptus Avenue, (ii) an at-grade track crossing at Centinela Avenue, and (iii) a pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line

¹⁷ PHC Transcript in A.12-11-018 and A.13-01-012, 88:3-17.

¹⁸ A.12-11-018 and A.13-01-012 PHC Transcript, 89:8-23, June 14, 2013.

¹⁹ *Id.*

(Crenshaw/LAX Project). Each of the proposed crossings is located in the City of Inglewood.

Table 1 below lists relevant information and the location for each proposed crossing:

Table 1: List of At-Grade Crossings²⁰

Crossing Name	CPUC Crossing No.	Warning Devices	City
Eucalyptus Avenue grade crossing	84A-3.30	2 Commission Std. 9, 2 Commission Std. 9E Gates, & Commission Std. 9 Pedestrian & Swing Gates and Passive Signs	Inglewood
Centinela Avenue	84A-4.12	2 Commission Std. 9, 2 Commission Std. 9E Gates, & Commission Std. 9 Pedestrian & Swing Gates and Passive Signs	Inglewood
Pedestrian Under-Crossing	84A-3.22BD	Locked security gates, Illumination, Video Surveillance, ADA Standards	Inglewood

Vehicular Crossings

As noted in Table 1 above, LACMTA proposes to construct two vehicular at-grade crossings across Eucalyptus Avenue and Centinela Avenue and a pedestrian undercrossing near Eucalyptus Avenue. The proposed vehicular at-grade crossings will have one or more of the following safety features: Commission Standard warning devices; standard traffic control signals; active

²⁰ LACMTA Application at 7.

Light-Emitting Diode (LED) “NO-LEFT” or “NO-RIGHT” turn blank-out signals where appropriate for regulating conflicting vehicular turn movements onto the crossings; median islands; enhanced signing and striping in compliance with the California Manual on Uniform Traffic Control Devices (CA MUTCD); and Americans with Disabilities Act (ADA) compliant detectable warning tactile strips on each pedestrian approach to the tracks, as shown in the plans attached to the application and Motion.

Eucalyptus Avenue

The Eucalyptus Avenue at-grade crossing will be equipped with train-actuated LED signs prohibiting vehicular traffic from turning across the tracks when trains approach.²¹ There will gates, signs, striping and audible warning devices consistent with Commission General Order (GO) 75-D and GO 143-B.²²

The Eucalyptus Avenue at-grade crossing will be constructed approximately 200 feet north of its intersection with Florence Avenue. Islands will be placed in the median to channel two lanes of southbound traffic on Eucalyptus Avenue into three lanes crossing or turning into Florence Avenue. Traffic in the single north bound lane will be provided a left hand turn lane onto Oak Street north of the crossing.²³

²¹ LACMTA Opening Brief at 8.

²² *Id.*

²³ *Id.* at 9.

Centinela Avenue

The Centinela Avenue at-grade crossing will be constructed with train-actuated LED signs prohibiting vehicular traffic from turning across the tracks when trains approach. There will gates, signs, striping and audible warning devices consistent with Commission GO 75-D and GO 143-B.

The Centinela Avenue at-grade crossing will be constructed across Centinela Avenue immediately north of its intersection with Florence Avenue.²⁴ The intersection with Florence Avenue is the southern terminus Centinela Avenue. The proposed design provides for two through lanes in either direction along Florence Avenue. There will be two lanes in either direction turning north bound onto Centinela Avenue.²⁵ Median Islands along both roadways will separate the two directions of traffic. The reconfigured Centinela Avenue would have three south-bound lanes, two turning left and one turning right. Each of these traffic movements will be controlled by a combination of signals, flashers, gates, bells, signs and pavement markings.

Pedestrian Undercrossing

The Pedestrian Undercrossing (Undercrossing) will be a private below-grade crossing located approximately 400 feet west of Eucalyptus Avenue on property owned by LACMTA. The Pedestrian Undercrossing will be approximately nine feet high, 12 feet wide and 50 feet long. The Undercrossing will be accessible via stairs and ADA-compliant ramps that will be located at both ends of the Undercrossing on FCBC property.²⁶ The Undercrossing will

²⁴ *Id.*

²⁵ LACMTA Opening Brief at 9.

²⁶ Joint Motion for Interim Decision Approving Settlement at 8.

include security gates, and cameras which will be controlled by FCBC. This will be a private crossing pursuant to GO 75-D and Pub. Util. Code § 7537.²⁷

4. Scope of the Proceeding

A Scoping Ruling in the instant proceeding was issued on October 3, 2013. As set forth in that ruling the ultimate/primary issue is to be addressed in this proceeding is whether the proposed: (i) at-grade track crossing at Eucalyptus Avenue, (ii) at-grade track crossing at Centinela Avenue, and (iii) pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line (Crenshaw/LAX Project) are in compliance with applicable Commission safety rules, procedures, guidelines and criteria.

Included in this issue are the following sub-issues:

1. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue consistent with the intent of Section 2 of the Commission's General Order 75-D?
2. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue in compliance with Rule 3.7(c) of the Commission's Rules of Practice and Procedure?
3. What are the additional costs of grade separated crossings at Eucalyptus Avenue and Centinela Avenue? How and/or should the Commission incorporate financial considerations in determining the appropriateness of at-grade crossings or grade separated crossings at Eucalyptus Avenue and Centinela Avenue?
4. Is the proposed pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue as set

²⁷ *Id.*

forth in the proposed Settlement Agreement between FCBC and LACMTA reasonable in light of the whole record, consistent with law, and in the public interest.

Parties were ordered to brief these issues. In an E-Mail Ruling issued on October 8, 2013, the assigned ALJ instructed the Parties not to brief Sub-Issue 4 unless or until an additional ruling authorizing them to do so was issued. Section iii of the Primary issue and Sub-issue 4 were resolved by the approval of the proposed Settlement and Release Agreement (Settlement Agreement), between the LACMTA and FCBC, in D.13-10-061, issued on October 31, 2013. The Interim Decision also disposed of FCBC's protest of the instant Application.to the application D.13-10-061 issued October 31, 2013. The remaining issues were briefed by LACMTA and the City.

We will first address the arguments and evidence, presented by the Parties, on Sub-issues 1-3. We will than address arguments and evidence, presented by the Parties, concerning the ultimate/main issue in the proceeding. We will not address Sub-issue 4 or Section iii of the Primary issue. These issues were resolved by the approval of the proposed Settlement Agreement, between the LACMTA and FCBC (D.13-10-061) issued on October 31, 2013. We will not address issues, arguments and/or evidence which are outside of the scope of this proceeding.

4.1. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue consistent with the intent of Section 2 of the Commission's General Order 75-D?

GO 75-D states that as part of its mission to reduce hazards associated with at grade crossings and in support of the national goal of the Federal Railroad Administration (FRA), the Commission's policy is to reduce the number of at grade crossings on freight or passenger railroad mainlines in California. The

City argues that that it is obvious that LACMTA's decision to construct an at-grade crossings at Centinela Avenue does not satisfy the intent of GO 75-D.²⁸

The City's brief then moves to a discussion of the term "practicable" as it relates to rail crossings. The "practicability standard" and how it relates to the approval of an at-grade crossing is more properly addressed in Sub-issue 2 and Sub-issue 3 of this proceeding.

LACMTA argues that the standard promulgated in Section 2 of GO 75-D has limited applicability to the Crenshaw/LAX Project. LACTMTA asserts that the FRA policy articulated in GO 75-D relates to freight and/or passenger "mainlines".²⁹ It is LACMTA's contention that Crenshaw/LAX Project is light rail system not contemplated by GO 75-D. LACMTA contends that the FRA is primarily responsible for conventional heavy rail operations rather than light rail.³⁰ LACMTA argues that FRA has jurisdiction over every area of railroad safety with the exception of "rapid transit operations" that operate in urban areas not connected to general railroad systems of transportation.³¹

LACMTA contends that the proposed at-grade crossings at Centinela Avenue and Eucalyptus are not inconsistent with the intent of GO 75-D because GO 75-D does not apply to light rail/rapid transit projects in general and the Crenshaw/LAX Project in particular. LACTMTA acknowledges that the

²⁸ City of Inglewood Brief at 4.

²⁹ LACMTA Brief at 12.

³⁰ LACMTA Brief at 12.

³¹ *Id.* at 13.

practicability standard for at-grade crossings raised by the City is important and is addressed in their brief.³²

4.2. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue in compliance with Rule 3.7(c) of the Commission's Rules of Practice and Procedure?

Rule 3.7(c) requires that applications to construct a railroad crossing must be made by the municipal, county, state or other governmental authority which proposes construction and that if the proposed crossing is at-grade the applicant must demonstrate that: 1.) There is a public need to be served by the crossing; 2.) A grade separation of the crossing is not practicable and; 3.) There are warning signs, signals and other devices at the crossing.³³ In order for the application to be approved all three elements of Rule 3.7(c) must be satisfied.

4.2.1. Rule 3.7(c)(1)

Rule 3.7(c)(1) requires the LACMTA to demonstrate that there is a public need to be served by the proposed crossing. As noted by LACMTA, the City's issue brief references sub-issue 2 in a single run on sentence addressing the practicability standard of Rule 3.7(c)(2) but not addressing whether there is or is not a public need to be served by the crossing.³⁴ The City's reply brief offers more insight into its position on Rule 3.7(c)(2) but not on this issue.

LACMTA asserts that there is a public need for the Crenshaw/LAX Project in general and a specific need that would be served by the grade-separated

³² *Id.* at 14.

³³ Rule 3.7(c).

³⁴ LACMTA Reply Brief at 19.

crossings at Eucalyptus and Centinela Avenues. Citing the Record of Decision of the Federal Transit Administration (FTA) attached to the Application, LACMTA claims that Crenshaw/LAX Project will improve transit service and increase regional connectivity.³⁵ LACMTA asserts that in order to avoid street closures and the resulting traffic congestion it was necessary that the Project include a rail alignment that crossed existing streets either by grade separation or by at-grade designs incorporating state of the art protection features.³⁶ LACMTA claims that there was no public support for closure of Eucalyptus or Centinela and that the at-grade designs for the project are appropriate.³⁷

4.2.2. Rule 3.7(c)(2)

Rule 3.7(c)(2) requires that in order for an at-grade crossing to be approved the Applicant must demonstrate that construction of a grade-separated crossing is not practicable. Both Parties agree that the practicability standard has been further revised by Commission Decisions in D.02-05-047.³⁸ In its reply brief the City sets out a six-part test. The LACMTA brief provides a seven-part test. The seven-part test articulated by LACMTA accurately states the Commission's most recent articulation of the practicability standard. As set forth in D.13-08-005, the Commission uses the following seven criteria for judging practicability in all at-grade crossing cases (light-rail transit, passenger railroad, and freight railroad):

1. A demonstration of public need for the crossing;

³⁵ LACMTA Brief at 16.

³⁶ LACMTA Brief at 18.

³⁷ *Id.*

³⁸ City of Inglewood Reply Brief at 10; LACMTA Brief at 20.

2. A convincing showing that LACMTA has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. A recommendation by Staff that it concurs in the safety of the proposed crossing, including any conditions;
6. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation; and
7. Commission precedent in factually similar crossings.³⁹

We now apply these criteria to the instant matter.

4.2.3. A Demonstration of Public Need for the Crossing

This portion of the practicability test was addressed (or not addressed) by the Parties in the discussion of Rule 3.7(c)(1), *supra*.

4.2.4. A Convincing Showing that LACMTA has Eliminated All Potential Safety Hazards

The City's analysis is focused on the Centinela Avenue crossing. In analyzing the potential safety hazards of the crossings the City uses the criteria set forth *City of San Mateo*.⁴⁰ The City states that there is no doubt the safety hazards at the Centinela Avenue crossing will increase because the crossing has not been in use for the best ten years.⁴¹ The City acknowledges that LACMTA's proposed safety measures are typical for an at-grade crossing and have been

³⁹ LACMTA Brief at 21 citing D.13-08-005 at 50.

⁴⁰ City of Inglewood, Reply Brief at 12 citing D.82-04-033, 8 CPUC2d 572.

⁴¹ *Id.*

discussed favorably by the Commission in other proceedings.⁴² The City asserts that these proposed safety measure are inadequate when applied to the Centinela Avenue crossing and that the crossing requires grade separation.⁴³

The City contends that LACMTA analysis of safety considerations relies on Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/FEIR) prepared in 2011 which contains a traffic study of the Centinela Avenue intersection with Florence Avenue prepared in 2008. The City argues the FEIR traffic study is not reflective of the current traffic and safety at Centinela and Florence and that a new study should be conducted.⁴⁴ The City also argues that FEIR/FEIS traffic report does not take into account the unique traffic patterns of the Inglewood Park Cemetery which has an entrance on Florence Avenue. The City contends that long funeral processions pose a unique hazard for the Centinela Avenue crossing.⁴⁵ Finally the City contends that the FEIR traffic study does not take into account the distinct and unique impacts of pedestrian and vehicle traffic associated with the sixteen weekly services at St. John's church which is located at the southern terminus of Centinela Avenue at Florence Avenue.⁴⁶

LACMTA argues that the at-grade crossing hazard analysis set forth in *City of San Mateo* is no longer applicable. Citing subsequent Commission decisions, LACMTA contends that the *City of San Mateo* practicability test does

⁴² *Id.*

⁴³ City of Inglewood, Reply Brief at 12.

⁴⁴ *Id.*

⁴⁵ City of Inglewood, Reply Brief at 13.

⁴⁶ *Id.*

not address real world considerations such as cost subsequent nor does recognize that safety issues associated with light rail systems are different than those related to heavy railroads.⁴⁷ LACMTA contends that the Commission's staff has determined that the safety hazards posed by light rail transit systems at street/highway crossings are substantially reduced in comparison to those posed by the commuter railroad systems considered by the Commission in the *City of San Mateo* case.⁴⁸

LACMTA argues that it does not have to demonstrate that there will be complete elimination of any and all potential safety hazards at the proposed crossings but rather that there will be an adequate level of safety which substantially diminishes the safety issues created by an at-grade crossing.⁴⁹

In assessing the safety of an at-grade crossing for a light rail system, LACMTA states that the Commission and its safety staff consider future pedestrian and vehicle traffic over the crossing, protective measures, sight lines, train speed, train frequency and length as well as other relevant factors unique to the crossing.⁵⁰

LACMTA indicates that it studied and considered a grade separated approach to the crossings at issue in this proceeding. In order to standardize and make publically transparent its grade separation evaluation methodology LACMTA indicates that it follows its "Policy for Grade Crossings for Light Rail Transit" which sets specific criteria for evaluating safety, operational and

⁴⁷ LACMTA Issue Brief at 20 citing D.02-05-047.

⁴⁸ *Id.*, citing D.02-10-023.

⁴⁹ *Id.* at 22.

⁵⁰ LACMTA Issue Brief at 20 citing D.02-10-023.

financial issues related to light rail crossings.⁵¹ The policy requires a four stage evaluation process consisting of initial screening, detailed analysis, verification and final decision making.⁵² LACMTA asserts that these stages provide for participation by relevant parties including local municipalities and the Commission. LACMTA states that determination to build at-grade crossings at Eucalyptus Avenue and Centinela Avenue was based on the application of criteria set forth in the Policy for Grade Crossings for Light Rail Transit.⁵³

As previously indicated, LACMTA believes that an at-grade crossing design is appropriate and safe for Centinela Avenue. LACMTA acknowledges that the City favors a grade-separated “cut and cover” design that that would run the light rail tracks through a trench below grade along Florence Avenue under Centinela Avenue.⁵⁴ LACMTA states that the “cut and cover” option was one of the design alternatives evaluated in the FEIS/FEIR for the Crenshaw/LAX project but was not included in the definition of the final project. LACMTA contends the FEIS/FEIR determined that the Project could operate safely with an at-grade crossing at Centinela Avenue. The cut and cover option was determined to be a “non-essential betterment” that would only be pursued if additional outside funding was available.⁵⁵ LACMTA contends that the City,

⁵¹ LACMTA Issue Brief at 23.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 26.

⁵⁵ LACMTA Issue Brief at 26.

while continuing to advocate for the cut and cover option, acknowledge that the option was a betterment for which it would seek funding.⁵⁶

LACMTA contends that the description of the grade-separated cut and cover option as betterment in the FEIS/FEIR was an acknowledgement that it was a non-essential element of the Project.⁵⁷ The City has argued that grade separation of the Centinela Avenue crossing is an essential safety driven element of the Project as opposed to a non-essential betterment.⁵⁸

LACMTA explains that it has made several changes to the Centinela Avenue crossing design in order to improve traffic flows and enhance safety at the intersection with Florence Avenue. These changes are outlined in the Declaration of James M. Okazaki (Okazaki Declaration) attached to LACMTA Issue Brief as exhibit C. These changes include lane reconfigurations and a combination of signals, flashers, gates, bells, signs and pavement markings.⁵⁹ LACMTA asserts that the lane reconfigurations will increase the capacity of the intersection and reduce the queuing of vehicles on Centinela and Florence Avenues and result in safer at-grade crossing.⁶⁰

LACMTA asserts that it has resolved the safety concerns associated with the Eucalyptus Avenue at-grade crossing. These concerns included the large volume of pedestrian traffic at the crossing associated with the FCBC. LACMTA contends that these issues have been resolved with the agreement to construct a

⁵⁶ LACMTA Issue Brief at 26, footnote 11.

⁵⁷ *Id.* at 26.

⁵⁸ City of Inglewood Reply Brief at 2.

⁵⁹ LACMTA Issue Brief at 27.

⁶⁰ LACMTA Issue Brief at 28, citing Okazaki Declaration at 7.

pedestrian undercrossing.⁶¹ In addition, driveways on the FCBC property and on an adjacent property are being relocated. LACMTA argues that the planning process for the crossings at Centinela Avenue and Eucalyptus Avenue has produced designs that are safe for vehicles and pedestrians and that do not require grade separation.⁶²

4.2.5. The concurrence of the Commission's rail safety, staff, local community and emergency authorities and consideration of the opinions of the general public (specifically those who may be affected by an at grade crossing)

The City is adamant that it has not and does concur with the elimination of grade separation at the crossings. The City asserts that LACMTA assertions to the contrary are misplaced.⁶³ The City also states that LACMTA has produced no evidence that local emergency authorities concur with the decision not to grade separate the crossings. Finally the City contends that while there was opportunity for the public to comment on the crossings the record is empty as what that public comment was, if any, as well as what the response of LACMTA was, if any.⁶⁴

LACMTA contends that in assessing the concurrence of relevant stakeholders, the Commission must consider the extent and level of LACMTA's cooperative efforts with and outreach to local governments, the local emergency authorities, the local community and general public, as well as, with the

⁶¹ *Id.*

⁶² *Id.* at 30.

⁶³ City of Inglewood, Reply Brief at 14.

⁶⁴ City of Inglewood, Reply Brief at 14.

Commission's rail safety staff.⁶⁵ LACMTA argues that the Commission's review of its cooperation with the rail safety staff and its outreach efforts to local government, emergency agencies and the public is contingent on whether there is and the source of opposition to the project. LACMTA contends that the key consideration is that the crossing is not opposed by the Commission's rail safety staff. LACMTA claims that the Commission typically limits its review of the concurrence of local entities to whether or not it, as the applicant, has reviewed the proposed crossing designs with the relevant entities.⁶⁶ LACMTA argues that some public opposition to a specific crossing is not determinative of approval if there have been reasonable public outreach efforts and other elements of the practicability standard have been satisfied.⁶⁷

LACMTA contends that with respect to the LAX/Crenshaw Project there has been extensive outreach efforts beginning with the environmental review process. LACMTA states that the FTA's Record of Decision notes that it implemented a robust and extensive public outreach and involvement program.⁶⁸ LACMTA points out that FEIS/FEIR thoroughly documents the public participation process. It contends that over 30 business groups and companies, almost the same number of schools and universities, church groups, neighborhood groups, block clubs, community organizations and homeowner's associations were contacted for the Project.⁶⁹

⁶⁵ LACMTA Issue Brief at 31.

⁶⁶ *Id.* at 32, citing D.10-07-026 at 11.

⁶⁷ *Id.* at 32.

⁶⁸ LACMTA Issue Brief at 33.

⁶⁹ *Id.* at 34.

LACMTA contends that throughout the design and evaluation process for the Eucalyptus Avenue and Centinela Avenue crossings it has continuously and consistently consulted with the Commission's rail safety staff, FCBC and the City.⁷⁰ LACMTA cites that Settlement Agreement between itself and FCBC, for a pedestrian undercrossing near the Eucalyptus Avenue crossing, as an example of this collaborative effort.

LACMTA admits that its efforts to resolve the City's concerns with respect to the Centinela Avenue crossing have been less than successful.⁷¹ However, LACMTA contends that it has had numerous meetings and engaged in extensive correspondence with City and/or Commission staff and conducted at least three joint site visits to the crossing. LACMTA reiterates that the "cut and cover" grade separation option for the Centinela crossing was not included in the FEIS/FEIR but that it and the City continued to discuss the "cut and cover" option as a "betterment" that was a non-essential aspect of the project and not necessary to comply with the City's applicable design or construction standards.⁷²

LACMTA states that it has had ongoing discussions with the City concerning the Project in general and the Centinela Avenue crossing in particular, including the direct participation of the City's mayor. LACMTA states that the City's concerns about the crossing have been clearly conveyed.

⁷⁰ *Id.* at 36.

⁷¹ *Id.* at 37.

⁷² LACMTA Issue Brief at 37.

LACMTA contends that a lack of funding and the passage of time have made the “cut and cover” option economically unfeasible.⁷³

4.2.6. The Comparative Costs of an At-Grade Crossing with a grade separation

The City argues that the cost of grade separating the Centinela Avenue crossing is not significant. The City states that there is reasonable evidence to conclude that grade separation at the Centinela Avenue crossing would cost in the range of \$20 to \$25 million.⁷⁴ The City contends that LACMTA has not given due consideration to the unique features of the Centinela and Florence Avenue intersection. The City argues that LACMTA has been arbitrary in determining which crossings to separate and that financial considerations are clearly not determinative of whether grade separation should be required.⁷⁵

The City contends that the practicability standard is not clear on what additional costs would make grade separation of the Centinela Avenue crossing unfeasible. The City observes that LACMTA has revised its plans for other portions of the Crenshaw/LAX Project; specifically the construction of two stations at Leimert Park Village and Hindry which added additional costs between \$80 million and \$120 million.⁷⁶ The City argues that an increase in the Project’s costs, due to grade-separating the Centinela Avenue crossing, is trivial considering the \$2.1 billion overall cost.⁷⁷

⁷³ *Id.*

⁷⁴ City of Inglewood, Reply Brief at 15.

⁷⁵ *Id.* at 16, 17.

⁷⁶ City of Inglewood, Reply Brief at 16, 17.

⁷⁷ *Id.* at 15.

LACMTA affirms that safety is the most important consideration in determining whether or not a crossing should be grade-separated but also points out that the Commission has recognized that this is the real world and costs to taxpayers to construct a grade-separated crossing is a consideration.⁷⁸ LACMTA contends that the Commission must consider whether the added expense of grade-separation is justified based on the resulting increase in safety.

LACMTA points out that the FEIR/FEIS included a calculation that a “cut-and-cover” trench option for grade-separating the Centinela Avenue crossing would add up to \$33 million to the cost of the Project.⁷⁹ In January of 2013 the additional cost was set at \$42.3 million. LACMTA places the current additional cost of grade-separating the Centinela Avenue crossing at \$114.3 million with an additional \$62.2 in Project costs for the Eucalyptus Avenue crossing.⁸⁰ LACMTA contends that, at current cost projections, grade separating the Centinela Avenue and Eucalyptus Avenue crossings would increase overall Project cost by more than ten percent.⁸¹

**4.2.7. Commission precedent in
approving/denying crossings factually
similar circumstances**

The City did not address this criterion in its briefs. LACMTA argues that the Commission has approved at-grade crossings under factually similar circumstances. LACMTA points to the Commission’s decision in D.13-08-005. In

⁷⁸ LACMTA Issue Brief at 30 citing D.02-05-047 at 11.

⁷⁹ *Id.*

⁸⁰ *Id.* at 31.

⁸¹ *Id.*

that proceeding the Exposition Metro Line Construction Authority (Expo Authority) was able to demonstrate that grade separation of crossings was not practicable.⁸² LACMTA contends that the Expo Authority was able to assure the Commission that at-grade crossings were safe as well as demonstrate that it had consulted with local agencies and solicited and obtained opinions from the general public.⁸³ In approving the at-grade crossings at issue in D.13-08-005 the Commission concluded that grade separation at the crossings was not practicable and that at-grade crossings are necessary in the design of modern light-rail systems.⁸⁴

4.2.8. Overall Practicability of Proposed At-Grade Crossings

The City contends that LACMTA has failed to provide sufficient evidence to overcome the presumption that the Centinela Avenue crossing should be grade separated.⁸⁵ The City asserts the FEIR/FEIS did not fully consider the unique features of the Centinela Avenue crossing. In addition, the City argues that LACMTA's analysis of the costs associated with grade separating the Centinela Avenue crossing lack evidentiary support and credibility.⁸⁶ The City urges the Commission to consider whether: 1) The Centinela Avenue crossing meets that criteria for a grade-separated crossing; 2) The Centinela Avenue crossing has distinct and unique features which lead to special hazards not

⁸² LACMTA Issue Brief at 38.

⁸³ *Id.*

⁸⁴ *Id.* at 39.

⁸⁵ City of Inglewood, Reply Brief at 17.

⁸⁶ City of Inglewood, Reply Brief at 17.

accounted for in the FEIR/FEIS and 3) It is practicable to spend an additional \$20-\$25 million to grade separate the Centinela Avenue crossing out of a total Project budget of \$2 billion.⁸⁷

LACMTA contends that the proposed at-grade crossings for Centinela Avenue and Eucalyptus Avenue are fully consistent with the Commission's practicability standard as it pertains to light rail crossings.⁸⁸ LACTMTA reiterates that, in a recent decision with a similar fact pattern, the Commission approved numerous at-grade crossings comparable to the at-grade crossings at issue in the instant proceeding, recognizing that at-grade crossings are necessary in the design of modern light-rail systems.⁸⁹

LACMTA asserts that there is a compelling public need for the Crenshaw/LAX Project and that the at-grade crossings at Centinela Avenue and Eucalyptus are an integral part of that Project. LACMTA contends that the proposed crossings are safe and that the cost of grade-separated crossings at theses intersections is disproportionate to any increase in safety.⁹⁰ LACMTA points out that it has conducted substantial public outreach in addition to working closely with the Commission's rail safety staff. LACMTA asserts that all relevant factors support the conclusion that grade-separation of the Centinela Avenue and Eucalyptus Avenue crossings is not practicable.⁹¹

⁸⁷ *Id.* at 18.

⁸⁸ LACMTA Issue Brief at 40.

⁸⁹ *Id.* at 41.

⁹⁰ *Id.*

⁹¹ LACMTA Issue Brief at 42.

4.2.9. Rule 3.7(c)(3)

Rule 3.7(c)(3) requires that LACMTA include in its application a statement describing the signs, signals and/or other crossing warning devices it plans to install at the proposed crossings. LACMTA states that this information is provided in §IV on page 7 of its application, Exhibits C and D of its application and Attachments B and C of its brief which contain diagrams of the proposed crossings including depictions of the recommended warning devices. The City does not dispute LACMTA's contention.

4.3. What are the additional costs of grade separated crossings at Eucalyptus Avenue and Centinela Avenue? How and/or should the Commission incorporate financial considerations in determining the appropriateness of at-grade crossings or grade separated crossings at Eucalyptus Avenue and Centinela Avenue?

The City did not directly address this issue in its opening brief or its reply brief. LACMTA asserts that it has provided the Commission with detailed and up to date estimates of the substantial added costs to the Project of grade separating the Centinela Avenue crossing. LACMTA states that this information was provided in its opening brief and in the Supplemental Declaration of Kimberly Ong attached to its reply brief.

LACMTA asserts that creating a grade-separated crossing at either Centinela or Eucalyptus Avenue by raising or lowering the streets with respect to the track is impractical, from an engineering prospective. LACMTA contends that most feasible way to grade-separate the Centinela Avenue crossing would be the "cut and cover" proposal discussed in the Project's environmental review process. A similar method would have to be used for the Eucalyptus Avenue crossing. LACMTA argues that grade-separation of the crossings is not

necessary from a safety prospective. LACMTA asserts that grade-separating the crossings is instead an elective “betterment” and contends that the City has known its (LACMTA’s) position for several years , the City must seek funds to pay the additional costs of grade separating the crossings.

LACMTA contends that it has generated cost estimates for the design of the “cut and cover” proposal during various phases of the Project. LACMTA states that in an early Project budget, developed in 2009, the “cut and cover” option was calculated to cost an additional \$13 million. LACMTA asserts that those costs have increased significantly as the Project has progressed. LACMTA states that the 2011 FEIS/FEIR included a calculation that the “cut and cover” trench option would add approximately \$33 million to the cost of the Project. LACMTA notes that a January 2013 Preliminary Engineering Cost Estimate calculated the cost of the “cut and cover” option at \$42.3 million. LACMTA contends that current projections place the cost of grade-separating the Centinela Avenue crossing at \$114.3 million and the cost for grade-separating the Eucalyptus Avenue crossing at \$62.2 million.

LACMTA argues that factors contributing to cost increases are the fact that grade-separating either or both crossings would require a Supplemental Environmental Assessment (SEA), in conformance with National Environmental Policy Act (NEPA), and a Subsequent Environmental Impact Report to comply with the California Environmental Quality Act (CEQA). LACMTA contends that there would be additional public review and comment as well as the necessity to gain approval from the FTA and the LACMTA Board of Directors. LACMTA argues that since the Project does not include the “cut and cover” option it would have to issue a “change order” for the Project. LACMTA estimates that the change order process would take an additional 8.5 months on top of the

12 months required for the additional environmental review and approvals. LACMTA asserts that when the total additional time is added up grade-separating the crossing would add approximately 13 months to the overall Project..

4.4. Ultimate/Primary Issue: Are the proposed at-grade track crossing at Eucalyptus Avenue, (ii) at-grade track crossing at Centinela Avenue, and (iii) pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line (Crenshaw/LAX Project) in compliance with applicable Commission safety rules, procedures, guidelines and criteria?

The City argues that the LACMTA has failed to provide sufficient evidence to overcome the presumption that the Centinela Avenue and Eucalyptus Avenue crossings should be grade separated.⁹² The City asserts that there are several unique features of the crossings that were not considered in the FEIR/FEIS or by the LACMTA. The City also contends the LACMTA's cost analysis lacks evidentiary support and is not credible.⁹³ The City argues that Commission's decision in this proceeding hinges on three issues of practicability: 1) Whether the 2003 guideline for determining grade separation has been met by the conditions at the Centinela Avenue crossing; 2) Whether the Commission believes that the Centinela Avenue crossing has distinct and unique features which lead to specialized hazards not accounted for in the FEIR/FEIS; and

⁹² City Reply Brief at 17.

⁹³ *Id.*

3) Whether an additional \$20-\$25 million out of a total Project budget of over \$2 billion is a practicable expenditure at the Centinela Avenue crossing.⁹⁴

LACMTA admits that it and the City disagree on various aspects of the instant Application including the how to accurately address estimate the costs for grade-separated alternatives and whether the safety of vehicles and pedestrians has been addressed.⁹⁵ LACMTA contends that it and the City do agree that the preferred method of dealing with a hazard is to eliminate it. LACMTA submits that its proposals for at-grade crossings for Centinela Avenue and Eucalyptus Avenue have addressed the applicable Commission standards for the construction of at-grade crossings.⁹⁶ LACMTA asserts that its Application, its briefs and Declarations contained therein have demonstrated that the proposed at-grade crossings at Centinela Avenue and Eucalyptus Avenue are consistent with the intent of Section 2 of GO 75-D and with the requirements of Rule 3.7(c).⁹⁷ LACMTA contends that it has provided a current and accurate accounting of the costs of grade-separating the two crossings and explained why those high costs support its contention that grade-separation is not practicable.⁹⁸

LACMTA points out that the Commission recognized in D.13-08-005 (Expo Rail Phase 2) that at-grade crossings are necessary in the design of modern

⁹⁴ City Reply Brief at 18.

⁹⁵ LACMTA Reply Brief at 22.

⁹⁶ *Id.*

⁹⁷ LACMTA Issue Brief at 47.

⁹⁸ *Id.*

light rail systems.⁹⁹ LACMTA contends that if at-grade crossings, for light rail systems, are properly designed utilizing the latest and best safety devices and technology they are safe. LACMTA calls for the Commission to approve its Application.

5. Discussion

On October 3, 2013, the Scoping Memo in the instant proceeding was issued. The purpose of the Scoping Ruling is to provide the Parties a clear template and road map with which to address the issues raised in the proceeding. If Parties do not address and/or follow the Scope of the proceeding it is difficult, if not impossible to have a comprehensive record of the case or to assess the merits of their arguments. Neither Party sought to revise or modify the Scoping Memo after it was issued.

In their reply brief LACMTA points out that the Scoping Ruling defined the issues to be briefed in the instant proceeding. LACMTA contends that it directly addressed these issues in its briefs. The City has for the most part limited its arguments to the Centinela Avenue crossing which it refers to in its briefs as the Centinela/Florence crossing. LACMTA asserts that the City chose to present its own issues for the Commission to consider in the instant proceeding and addressed only some of the issues set forth in the Scoping Ruling. We agree. In discussing the issues, arguments and evidence presented by the Parties in instant proceeding, we will only address those issues, arguments and evidence that are within the scope.

⁹⁹ LACMTA Issue Brief at 48.

As we have previously stated, the ultimate/primary issue is to be addressed in this proceeding is whether the proposed: (i) at-grade track crossing at Eucalyptus Avenue, (ii) at-grade track crossing at Centinela Avenue, and (iii) pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line (Crenshaw/LAX Project) are in compliance with applicable Commission safety rules, procedures, guidelines and criteria.

Included in this issue are the following sub-issues:

1. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue consistent with the intent of Section 2 of the Commission's General Order 75-D?
2. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue in compliance with Rule 3.7(c) of the Commission's Rules of Practice and Procedure?
3. What are the additional costs of grade separated crossings at Eucalyptus Avenue and Centinela Avenue? How and/or should the Commission incorporate financial considerations in determining the appropriateness of at-grade crossings or grade separated crossings at Eucalyptus Avenue and Centinela Avenue?
4. Is the proposed pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue as set forth in the proposed Settlement Agreement between FCBC and LACMTA reasonable in light of the whole record, consistent with law, and in the public interest.
- 5.1. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue consistent with the intent of Section 2 of the Commission's General Order 75-D?**

The purpose of GO 75-D is to reduce hazards associated with at-grade crossings by establishing uniform standards for warning devices for at-grade crossings in the State of California, the application of which may afford safety for

all persons traversing at-grade crossings.¹⁰⁰ Section 2 of GO 75-D states that it is intended to reduce hazards associated with at-grade crossings, and in support of the national goal of the FRA, the Commission's policy is to reduce the number of at-grade crossings on freight or passenger railroad mainlines in California.¹⁰¹ In its brief The City argues that that it is obvious that LACMTA's decision to construct at-grade crossings at Centinela Avenue does not satisfy the intent of GO 75-D, and little else.

LACMTA argues that the standard promulgated in in Section 2 of GO 75-D has limited applicability to the Crenshaw/LAX Project. LACTMTA asserts that the FRA policy articulated in GO 75-D relates to freight and/or passenger "mainlines."¹⁰² It is LACMTA's contention that Crenshaw/LAX Project is light rail system not contemplated by GO 75-D. LACMTA contends that the FRA is primarily responsible for conventional heavy rail operations rather than light rail.¹⁰³ LACMTA contends that the proposed at-grade crossings at Centinela Avenue and Eucalyptus are not inconsistent with the intent of GO 75-D because GO 75-D does not apply to light rail/raid transit projects in general and the Crenshaw/LAX Project in particular.

As previously noted the purpose of GO 75-D is to reduce hazards associated with at-grade crossings by establishing uniform standards for warning devices for at-grade crossings in the State of California, in order to insure people traversing the at-grade crossings are safe. Section 2 of GO 75-D

¹⁰⁰ CPUC GO-75-D, § 1.

¹⁰¹ *Id.*, § 2.

¹⁰² LACMTA Brief at 12.

¹⁰³ *Id.*

states that in order to implement the purpose of reducing hazards at at-grade crossings the policy is to reduce the number of at-grade crossings on freight or passenger railroad mainlines in California. As previously noted, LACMTA contends that the proposed at-grade crossings at Centinela Avenue and Eucalyptus are not inconsistent with the intent of GO 75-D because GO 75-D does not apply to light rail/rapid transit projects in general and the Crenshaw/LAX Project in particular.

The Commission recognized in D.13-08-005 (Expo Rail Phase 2) that at-grade crossings are necessary in the design of modern light rail systems.¹⁰⁴ When taken in conjunction with the stated purpose of GO 75-D, contained in section, and Commission's decisions in similar cases including D.13-08-005 we conclude that the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue are not inconsistent with the intent of Section 2 of the Commission's General Order 75-D.

5.2. Are the proposed at-grade track crossings at Eucalyptus Avenue and Centinela Avenue in compliance with Rule 3.7(c) of the Commission's Rules of Practice and Procedure?

Rule 3.7(c) governs proposed at-grade railroad crossings it contains three sub-sections. LACMTA must be in compliance/conformance with all three sub-sections in order to construct the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue.

¹⁰⁴ LACMTA Issue Brief at 20 citing D.02-10-023.

5.2.1. Rule 3.7(c)(1)

Rule 3.7(c)(1) requires that the governmental agency seeking authority to construct an at-grade crossing provide a statement setting forth the need to be served by the proposed crossing. LACMTA asserts that there is a public need for the Crenshaw/LAX Project in general and a specific need that would be served by the grade-separated crossings at Eucalyptus and Centinela Avenues. Citing the Record of Decision of the FT) attached to the Application, LACMTA claims that Crenshaw/LAX Project will improve transit service and increase regional connectivity.¹⁰⁵ LACMTA asserts that in order to avoid street closures and the resulting traffic congestion it was necessary that the Project include a rail alignment that crossed existing streets either by grade separation or by at-grade designs incorporating state of the art protection features. The City did not brief this issue.

LACMTA has constructed and is operating several light rail transit and subway lines in Southern California, including the Metro “Blue,” “Green,” “Red,” “Gold” and “Exposition” lines.¹⁰⁶ As proposed, the instant Project would begin at the southern terminus of the Metro Green Line and follow an existing railroad right of way adjacent to Aviation Boulevard and Florence Avenue northeast to Crenshaw Boulevard and would travel north within the Crenshaw Boulevard right of way to the Exposition/Crenshaw Station located adjacent to the Metro Exposition Line.¹⁰⁷ The Project as proposed fits into the overall scheme of public/light-rail transit in the L.A. metropolitan area; LACMTA has clearly

¹⁰⁵ LACMTA Brief at 16.

¹⁰⁶ LACMTA Application, A.12-11-018 at 2.

¹⁰⁷ *Id.*

articulated the need to be served by the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue.

5.2.2. Rule 3.7(c)(2)

Rule 3.7(c)(2) requires that in order for an at-grade crossing to be approved the Applicant must demonstrate that construction of a grade-separated crossing is not practicable. As set forth in D.13-08-005, the Commission uses the following seven criteria for judging practicability in all at-grade crossing cases (light-rail transit, passenger railroad, and freight railroad):

1. A demonstration of public need for the crossing;
2. A convincing showing that LACMTA has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. A recommendation by Staff that it concurs in the safety of the proposed crossing, including any conditions
6. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation; and
7. Commission precedent in factually similar crossings.¹⁰⁸

We now apply these criteria to the instant matter.

5.2.3. A Demonstration of Public Need for the Crossing

This issue mirrors the requirements of Rule 3.7(c)1 which we discussed *supra*. Our determination on this issue is the same; the Project as proposed fits

¹⁰⁸ LACMTA Brief at 21 citing D.13-08-005 at 50.

into the overall scheme of public/light-rail transit in the L.A. metropolitan area; LACMTA has clearly articulated the need to be served by the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue. The City has not offered any credible evidence or argument to the contrary.

5.2.4. A Convincing Showing that LACMTA Has Eliminated All Potential Safety Hazards

As previously noted, the City has primarily focused its arguments in opposition to the proposed crossings at-grade crossings on Centinela Avenue and not Eucalyptus Avenue. In arguing that LACMTA has not eliminated all potential safety hazards at the Centinela Avenue crossing the City uses the criteria set forth *City of San Mateo*, which was issued in 1982.¹⁰⁹ The City also takes issue with the FEIR/FEIS reports which determined that the proposed crossing was safe.

LACMTA contends that the at-grade crossing hazard analysis set forth in *City of San Mateo* is no longer applicable. Citing subsequent Commission decisions, LACMTA contends that the *City of San Mateo* practicability test does not address real world considerations such as cost subsequent nor does recognize that safety issues associated with light rail systems are different than those related to heavy railroads.¹¹⁰ LACMTA argues that it does not have to demonstrate that there will be complete elimination of any and all potential safety hazards at the proposed crossings but rather that there will be a reasonable and effective level of safety which substantially diminishes the safety issues created by an at-grade crossing. We agree.

¹⁰⁹ City of Inglewood, Reply Brief at 12 citing D.82-04-033, 8 CPUC2d 572.

¹¹⁰ LACMTA Issue Brief at 20 citing D.02-05-047.

The record in the instant proceeding demonstrates that the safety measures taken for the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue are reasonable and effective. LACMTA has adopted and applies the Policy for Grade Crossings for Light Rail Transit which sets specific criteria for evaluating safety, operational and financial issues related to light rail crossings.¹¹¹ The policy requires a four stage evaluation process consisting of initial screening, detailed analysis, verification and final decision making. This is the same criteria that LACMTA has used, and the Commission has approved, for at-grade crossings in other phases of the greater Los Angeles metro rail system.

5.2.5. The concurrence of the local community, emergency authorities, the Commission's rail safety staff and consideration of the opinions of the general public, and specifically those who may be affected by an at-grade crossing

As noted, *supra*, the City is adamant that it has not and does concur with the elimination of grade separation at the crossings. The City asserts that LACMTA assertions to the contrary are misplaced.¹¹² The City also states that LACMTA has produced no evidence that local emergency authorities concur with the decision not to grade separate the crossings. Finally the City contends that while there was opportunity for the public to comment on the crossings the record is empty as to what that public comment was, if any, as well as what the response of LACMTA.

¹¹¹ LACMTA Issue Brief at 23.

¹¹² City of Inglewood, Reply Brief at 14.

LACMTA contends that in assessing the concurrence of relevant stakeholders, the Commission must consider the extent and level of LACMTA's cooperative efforts with and outreach to local governments, the local emergency authorities, the local community and general public, as well as, with the Commission's rail safety staff. The FTA's Record of Decision, for the Project notes that it implemented a robust and extensive public outreach and involvement program.¹¹³ The FEIS/FEIR thoroughly documents the public participation process with over 30 business groups and companies, almost the same number of schools and universities, church groups, neighborhood groups, block clubs, community organizations and homeowner's associations were contacted for the Project. The Commission's Rail Safety Staff does not oppose the proposed crossings.

LACMTA and the City clearly disagree on the need for grade separation at the crossings, Centinela Avenue in particular, however, the City's concurrence is not necessary for the proposed at-grade crossings to be approved. LACMTA has demonstrated that it has complied with criteria set forth in D.13-08-005 and sought the input and concurrence of the relevant stakeholders.

5.2.6. The Comparative Costs of an At-Grade Crossing With a Grade Separation

The City contends that the practicability standard is not clear on what additional costs would make grade separation of the Centinela Avenue crossing unfeasible. The City asserts that a grade separation at the Centinela Avenue crossing would cost in the range of \$20 to \$25 million. The City has not committed to providing any of the additional funds.

¹¹³ City of Inglewood, Reply Brief at 33.

LACMTA contends that the Commission must consider whether the added expense of grade-separation is justified based on the resulting increase in safety. The FEIR/FEIS included a calculation that a “cut-and-cover” trench option for grade-separating the Centinela Avenue crossing would add up to \$33 million to the cost of the Project.¹¹⁴ In January of 2013, the additional cost was set at \$42.3 million. LACMTA places the current additional cost of grade-separating the Centinela Avenue crossing at \$114.3 million with an additional \$62.2 in Project costs for the Eucalyptus Avenue crossing.¹¹⁵

The City’s estimates for the cost of grade separating the crossings only includes estimated the costs for Centinela Avenue. LACMTA cost estimates for both crossings are considerable higher. It is reasonable to assume that the cost for grade separating the two crossings would be in excess of \$50 million and possibly twice that amount.

5.2.7. Commission Precedent in Factually Similar Crossings

The City did not brief this issue. LACMTA contends that the Commission has approved at-grade crossings under similar circumstances. LACMTA points to the Commission’s decision in D.13-08-005. In that proceeding the Exposition Metro Line Construction Authority (Expo Authority) was able to demonstrate that grade separation of crossings was not practicable.¹¹⁶ LACMTA contends that the Expo Authority was able to assure the Commission that at-grade crossings were safe as well as demonstrate that it had consulted with local

¹¹⁴ LACMTA Issue Brief at 30.

¹¹⁵ Ong Declaration, LACMTA Issue Brief (Attachment E).

¹¹⁶ LACMTA Issue Brief at 38.

agencies and solicited and obtained opinions from the general public.¹¹⁷ In approving the at-grade crossings at issue in D.13-08-005 the Commission concluded that grade separation at the crossings was not practicable and that at-grade crossings are necessary in the design of modern light-rail systems.¹¹⁸ We agree.

5.2.8. Overall Practicability of Proposed At-Grade Crossings

We agree with LACMTA's contention that the proposed at-grade crossings for Centinela Avenue and Eucalyptus Avenue are fully consistent with the Commission's practicability standard as it pertains to light rail crossings. The Commission has approved numerous at-grade crossings comparable to the at-grade crossings at issue in the instant proceeding, recognizing that at-grade crossings are necessary in the design of modern light-rail systems. All relevant factors/criteria for determining the practicability, as set forth in D.13-08-005 support the conclusion that grade-separation of the Centinela Avenue and Eucalyptus Avenue crossings is not practicable. As currently configured the proposed crossings are safe and the cost of grade-separated crossings at these intersections is disproportionate to any increase in safety.

5.2.9. Rule 3.7(c)(3)

Rule 3.7(c)(3) requires that LACMTA include in its application a statement describing the signs, signals and/or other crossing warning devices it plans to install at the proposed crossings. This information is provided in § IV on page 7 of its application, Exhibits C and D of its application and Attachments B and C of

¹¹⁷ *Id.*

¹¹⁸ LACMTA Issue Brief at 39.

its brief which contain diagrams of the proposed crossings including depictions of the recommended warning devices.

5.3. What are the additional costs of grade separated crossings at Eucalyptus Avenue and Centinela Avenue? How and/or should the Commission incorporate financial considerations in determining the appropriateness of at-grade crossings or grade separated crossings at Eucalyptus Avenue and Centinela Avenue?

As set forth in Section 4.3 supra, it is reasonable to assume that the cost for grade separating the two crossings would be in excess of \$50 million up to \$100 million depending on how what overall costs are included in the calculation. Creating a grade-separated crossing at either Centinela or Eucalyptus Avenue by raising or lowering the streets with respect to the track is impractical, from an engineering prospective.¹¹⁹ LACMTA and the City agree that the most feasible way to grade-separate the Centinela Avenue crossing would be the “cut and cover” proposal discussed in the Project’s environmental review process. LACMTA contends that a similar cut and cover method would have to be used to grade separate the Eucalyptus Avenue Crossing.

LACMTA argues that grade-separation of the crossings is not necessary from a safety prospective. LACMTA asserts that grade-separating the crossings are instead an elective “betterment” and that the City must seek funds to pay the additional costs of grade separating the crossings.

In determining whether a crossing should be grade separated safety is of paramount importance; financial considerations are not determinative of

¹¹⁹ LACMTA Issue Brief at 43.

whether an at-grade crossing should be required. Once an Applicant has established that it has taken prudent and effective measures to insure an at-grade crossing is safe the Commission must consider whether the added expense of grade-separation is justified based on the resulting increase in safety. In the instant proceeding the record supports LACMTA's contention that the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue are safe and consistent with other at-grade crossings we have approved for the Los Angeles metro light rail system. A grade separated crossing for Eucalyptus Avenue and/or Centinela Avenue is an optional betterment that would cost in excess of \$50 million. The City is in favor of the betterment but has not indicated how it would be funded.

5.4. Is the proposed pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue as set forth in the proposed Settlement Agreement between FCBC and LACMTA reasonable in light of the whole record, consistent with law, and in the public interest?

On October 31, 2013, the Commission issued D.13-10-061. This approved a Settlement Agreement between LACMTA and FCBC defining rights and responsibilities for construction, operation, and maintenance of a pedestrian undercrossing and related matters; some of the more important terms of the Settlement Agreement and Pedestrian Undercrossing include:

- LACMTA will own the Pedestrian Undercrossing; FCBC will own the Stairs and Access Ramp; LACTMA will be responsible for the structural integrity of the Pedestrian Undercrossing, Stairs, and Access Ramps; and FCBC will be responsible for the general day-to-day operation, access,

cleaning and maintenance of the Pedestrian Undercrossing, Stairs and Access Ramps.¹²⁰

- LACTMA shall construct the Pedestrian Undercrossing, the Stairs, and Access Ramps in compliance with all terms of Settlement Agreement, applicable laws, rules and regulations. The final design of each element is to be reviewed by FCBC.
- FCBC shall grant an easement to LACMTA to enter upon and use the stairs and ramp and the driveway for the purpose of allowing LACTMA contractors, employees, and agents: 1) to construct the Pedestrian Undercrossing, the Stairs and Access Ramps and the Driveway; and 2) to maintain the structural integrity of the Pedestrian Undercrossing, the Stairs and Access Ramps.¹²¹

In D.13-10-061 we determined that the Settlement Agreement was reasonable in the light of the whole record, consistent with the law and in the public interest.

- LACTMA shall grant an easement to FCBC to enter upon and use the Pedestrian Undercrossing subject to the terms of Agreement.¹²²

The Pedestrian Undercrossing shall be classified as private per California Public Utility Commission General Order 75-D and Public Utilities Code Section 7537.¹²³

6. Conclusion

In the light of the whole record and consistent with the law, grade separation of the proposed crossings at Eucalyptus Avenue and Centinela

¹²⁰ See Section (E) of Agreement.

¹²¹ See Section (3) of Agreement.

¹²² See Section (4) of Agreement. See Section (10) of Agreement for LACMTA responsibilities with regard to their responsibility for the structural integrity of the Passenger Undercrossing.

¹²³ See Section (5) of Agreement.

Avenue is not practicable or in the public interest. We conclude that the proposed: (i) at-grade track crossing at Eucalyptus Avenue, (ii) at-grade track crossing at Centinela Avenue, and (iii) pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Project are in compliance with applicable Commission safety rules, procedures, guidelines and criteria. The protest of the City of Inglewood should be denied and the Los Angeles County Metropolitan Transportation Authority should be granted authorization to construct the three crossings.

7. Environmental Review and CEQA Compliance

The California Environmental Quality Act of 1970 (CEQA, as amended, Public Resources Code Section 21000, et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to inform governmental decision makers and the public about potential, significant environmental effects of the proposed activities. Since the project is subject to CEQA and the Commission must issue a discretionary decision in order for the project to proceed (i.e., the Commission has the exclusive authority to approve the project pursuant to Section 1202 of the Public Utilities Code), the Commission must consider the environmental consequences of the project by acting as either a lead or responsible agency under CEQA.

The lead agency is either the public agency that carries out the project,¹²⁴ or the one with the greatest responsibility for supervising or approving the project as a whole.¹²⁵ Here, LACMTA is the lead agency for this project, and the

¹²⁴ CEQA Guidelines (Title 14 of the California Code of Regulations), Section 15051(a).

¹²⁵ *Id.*, Section 15051(b).

Commission is a responsible agency because it has jurisdiction to issue a permit for the project. As a responsible agency under CEQA, the Commission must consider the lead agency's environmental documents and findings before acting on or approving this project.¹²⁶ As a responsible agency, the Commission is responsible for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.¹²⁷

The LACMTA prepared a Final Environmental Impact Statement/Final Environmental Impact Report (FEIS/R) dated August 2011. The Federal Transit Administration (FTA) issued a Record of Decision on December 30, 2011.

The FEIS/R identified potentially significant environmental impacts and associated mitigation measures related to the project. Impacts identified under CEQA, relating to the rail crossings are under the Commission's jurisdiction. The impacts related to the Commission's jurisdiction are noise and safety. However those impacts can be mitigated to a less-than-significant level.

Specifically, in regards to noise the environmental review found that the FTA guidance requires that the warning signal analysis be completed using a reference noise level of 109 dBA at 50 feet. The warning signal noise would exceed the significance criteria at 57th Street and West Boulevard grade crossing. However, those crossings are not at issue in this application.

Regarding safety, the environmental review found that at location where pedestrian crossings are provided there may be potential for motorist and

¹²⁶ CEQA Guidelines, Sections 15050(b) and 15096.

¹²⁷ CEQA Guideline Section 15096(g).

pedestrian confusion when freight train and light rail transit (LRT) vehicles come in sequence.

Safety around the trackway would be ensured through implementation of appropriate warning devices. Also, the speed of the train would not exceed 35 mph when it is running at-grade in the center of the street and crossing would occur with traffic signals, or the train speed would exceed 35 mph and barriers would impede access to the tracks. At designated crossings, pedestrian and motorist gates and visual and audible warning devices would be provided.

The following mitigation measure will reduce these impacts to less-than-significant:

- SS6 – Metro shall implement appropriate measure to ensure pedestrian crossing safety at all locations with adjacent schools, churches, and high pedestrian areas to satisfy the requirements of determined by the CPUC.
- SS7 – LACMTA shall conduct a hazard analysis before the start of final design, using current safety analysis as a reference. The hazard analysis shall determine a design basis for warning devices as required by the commission.
- SS8 – LACMTA will implement appropriate vehicular and pedestrian warning measures, such as signage along the length of the LRT station platforms. Gates will be provided at vehicular and pedestrian at-grade crossings of the LRT and/or BNSF tracks within the Harbor Subdivision. These measures will be provided to alert motorists and pedestrians to potential conflict in the area.
- SS9 - To discourage trespassing and enhance safety, such as near Faithful Central Bible Church, LACMTA will provide fencing along either side of the alignment, between the parking lot and church buildings, and ensure adequate pedestrian safety devices at designated at-grade crossings.

LACMTA further prepared an SEA, dated July 2, 2012. The SEA was prepared to address project modifications that occurred during the preliminary engineering phase to reduce cost, reduce right-of-way impacts, and improve traffic circulation and pedestrian crossings, among other items. Specifically, the SEA identified the types of equipment at the crossings and features along the corridor that would be required for the project. During preliminary engineering and in consultation with the Commission's Rail Crossings Engineering Section staff, designs for street, driveway, and sidewalk modifications were refined to accommodate, where feasible, crossing gates, center medians at crossings, equipment, bus bays, and other amenities to facilitate vehicular and pedestrian circulation. Additional pedestrian crossing improvements, including a midblock pedestrian crossing, were included in response to public comments.

Subsequently, under the requirements of the NEPA, the FTA issued a Finding of No Significant Impact on September 4, 2012.

The Commission reviewed and considered LACMTA's FEIS/R and SEA, and finds the documents adequate for our decision-making purposes.

8. Proceeding Category and Need for Hearing

In Resolution ALJ-176-3305, dated November 29, 2012, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Protests were filed by FCBC on December 21, 2012, and Inglewood on December 31, 2012. The preliminary determination categorizing this proceeding as ratesetting and determining that hearings are not necessary remains.

9. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were

allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on July 31, 2014 by the City of Inglewood and LACMTA. Reply comments were filed on August 5, 2014 by LACMTA and late filed on August 7, 2014 by the City of Inglewood.

The City of Inglewood contends that the PD fails to meet seven criteria for PUC acceptance. First, the City contends that the PD fails to demonstrate that its standard that a design which "substantially diminishes the safety issues created by an at-grade crossing" is the same as the statutory guideline of preferring grade separation unless "impracticable". Second, the City asserts that it fails to demonstrate that in accepting the FEIR evaluation based on "no immitigable adverse impacts," an independent evaluation based the PUC's "grade separation preference" was made. Third, the City contends that the PD fails to demonstrate that the delay cost, claimed to be the primary cost escalator, is credible, and it offers no evaluation of the conflicting evidence. Fourth, the City asserts that the PD fails to demonstrate that the additional cost claim is credible, since it references "at least \$50 million" as the additional costs, yet no declaration references that number. Fifth, the City asserts that inclusion of the Eucalyptus crossing costs is not supported in the LACMTA declarations. Sixth, City states that the PD assumes speculative costs and events associated with project delays which fail to meet the "preponderance of evidence test." Further, the PD makes no evaluation of the conflicting evidence. Seventh, the City asserts that the PD fails to demonstrate that the City's claim, based on the evaluation thresholds of LACMTA, that the "grade separation" criteria was met, is incorrect, and the PD does not consider whether the at-grade crossing decision was erroneous based on LACMTA's own standards. Further, the PD makes no evaluation of the

conflicting evidence on application of LACMTA's thresholds to the Centinela crossing.¹²⁸

LACMTA states that it has identified very few errors in the PD and believes that the PD accurately identifies the key issues presented by LACMTA's application and correctly resolves them.¹²⁹ The first error in the PD identified by LACMTA concerns the amount of time the Project would be delayed. The PD contains an assertion from LACMTA that grade-separating the crossing would add five to six additional years to the Project.¹³⁰ LACMTA contends that this statement is not correct. LACMTA states that based on the Declaration of Kimberly Ong, Director of Project Engineering, it is an estimate that the incremental cost of grade-separating the Centinela Avenue crossing would be on the order of \$114.3 million, including the cost associated with project delay.¹³¹ LACMTA explained that the change order process would take 8.5 months to complete, after a 12-month process for additional environmental review and approval, to which would be added the time required in any event for civil construction, systems installation, testing, and pre-revenue operation, indicating completion of a grade-separated crossing at Centinela in 71.5 months. LACMTA further stated that this time-line indicated a delay of 27 months in completing the

¹²⁸ City of Inglewood Opening Comments to PD at 13.

¹²⁹ LACMTA Opening Comments to PD at 1.

¹³⁰ PD at 33.

¹³¹ LACMTA Opening Comments to PD at 2, citing LACMTA Opening Brief at 45, and Attachment E (Ong Declaration) at 12.

Centinela crossing and would delay the overall Project by approximately 13 months.¹³² .

LACMTA states that it appears that the PD has interpreted LACMTA's reference to the entire 71.5 month time to completion of a grade-separated Centinela Avenue crossing as additional years added to the Project as a whole. LACMTA apologizes for its presentation of these time-lines being less clearly stated than they should have been, but respectfully urges that the Proposed Decision be revised (in the first complete sentence on page 33) to indicate that LACMTA asserts that the additional time to grade-separate the crossing would add approximately 13 months (not five to six years) to the overall Project. As Ms. Ong's Declaration attests. LACMTA asserts that even that 13 months' Project delay would be extremely costly.¹³³ The second error identified by LACMTA is in Finding of Fact #21. LACMTA points out that the PD concluded that it and the City clearly disagree on the need for grade separation at the crossings, Centinela Avenue in particular, but that the City's concurrence is not necessary for the proposed at-grade crossings to be approved because LACMTA has demonstrated that it has complied with criteria set forth in D.13-08-005 and sought the input and concurrence of the relevant stakeholders.¹³⁴ LACMTA points out that Finding of Fact #21, however, states that LACMTA has obtained the concurrence of local community and emergency authorities. As the discussion at pages 42-43 of the PD indicates, the record does not support that

¹³² LACMTA Opening Comments to PD at 2, citing LACMTA Opening Brief at 46, and Attachment E (Ong Declaration) at 9-11.

¹³³ LACMTA Opening Comments to PD at. 3.

¹³⁴ PD at 42-43.

finding. LACMTA recommends that Finding 21 be revised to state that LACMTA has sufficiently consulted with local community and emergency authorities and the Commission's rail safety staff and has modified the design of the proposed at-grade crossings in response to their concerns.¹³⁵

LACMTA states that the PD includes a thorough consideration of the applicable requirements for environmental review and compliance with the California Environmental Quality Act ("CEQA"), including an accurate description of the Commission's role as a responsible agency under CEQA.¹³⁶ LACMTA points that tis discussion concludes by noting that the Commission reviewed and considered LACMTA's Final Environmental Impact Statement/Final Environmental Impact Report and its Supplemental Environmental Assessment ("SEA") and "finds the documents adequate for our decision-making purposes."¹³⁷ LACMTA recommends that the Commission's completion of its duties as a responsible agency will be confirmed by including specific findings of fact consistent with the environmental review discussion noted above. Specifically, LACMTA proposes that the following findings of fact be added to the Proposed Decision:

- #28. The Commission reviewed and considered LACMTA's Final Environmental Impact Statement/Final Environmental Impact Report and its Supplemental Environmental Assessment.

¹³⁵ LACMTA Opening Comments to PD at 3-4.

¹³⁶ PD at 49-52.

¹³⁷ LACMTA Opening Comments to PD at 4, citing PD at 52.

- #29. LACMTA's environmental review documents are adequate for the Commission's decision-making purposes as a responsible agency.¹³⁸

Finally, LACMTA requests that Ordering Paragraph #2 be clarified by referencing the revised crossing diagrams. LACMTA points out that Ordering Paragraph No. 2 approves the Application filed by LACMTA, "as amended."¹³⁹ LACMTA states, however, that it never formally amended the instant Application, but did present two sets of revised crossing diagrams for the Pedestrian Underpass and the Eucalyptus Avenue and Centinela Avenue crossings in attachments to its Opening Brief, illustrating revisions to LACMTA's proposal for those crossings. In consideration of these facts, and in order to clarify the intention and effect of the PD's Ordering Paragraph #2, LACMTA proposes that Ordering Paragraph #2 be revised by replacing the phrase, "as amended", with the phrase, "with the revised crossing diagrams presented in Attachments B and C to Applicant's Opening Brief".¹⁴⁰

In its reply comments the City of Inglewood contends that the presumption of grade separation was abandoned in the PD with its use of terms that demonstrated that the standards of the FEIR, which do not invoke the concept of grade separation preference, were applied. The City also contends that there is no indication that the evidence proffered by the City was considered and found, by weighing the evidence, to be unconvincing. Moreover, the City contends that the cost delays alleged by the LACMTA have not been presented

¹³⁸ LACMTA Opening Comments to PD at 5.

¹³⁹ PD at 56-57.

¹⁴⁰ LACMTA Opening Comments to PD at 6.

in a way that permits consideration of their foundational accuracy. The City asserts that it is because of this apparent lack of foundational accuracy, that misled the ALJ to conclude in the PD that the delay time and related cost of delay made the requested grade separation of the City at the Centinela crossing impracticable. The PD also makes an unsupported connection between the costs of two independent crossings (Eucalyptus and Centinela) and by doing so concludes that the costs of a grade separation at the Centinela crossing are impracticable. The City asserts that the PD makes this determination despite the fact that there is no claim, even in the LACMTA declarations, that these crossings are by design connected in such a manner that a grade separation of one requires a grade separation of the other. The City contends that it is this erroneous connection that led to a finding in the PD that has the effect of doubling the cost of a grade separation at the Centinela crossing by adding to it the cost of a grade separation at the Eucalyptus crossing. The City seeks adoption of Option 3 at the Centinela crossing, and failing that, a reconsideration of the evidence that led to the erroneous findings of the PD.¹⁴¹

In its reply comments LACMTA contends that The City of Inglewood is not happy with the Proposed Decision, but continues to pursue issues that were not presented in this proceeding and to oppose the application of well-established principles guiding the Commission's actions in matters relating to the design and construction of modern light rail transit systems. LACMTA asserts that the City claims to find a number of errors in the PD but that the aspects of the PD that it criticizes are not errors at all but rather appropriate

¹⁴¹ City of Inglewood Reply Comments to PD at 4-5.

aspects of a well-reasoned resolution of the instant application.¹⁴² LACMTA states that under the heading, “City Protest Issues,” the City lists three “matters about which the City requested a decision by the ALJ,” and then complains that the second issue was wrongly decided and the other issues were not addressed in the Proposed Decision.¹⁴³ LACMTA asserts that the Scoping Memo defined the issues to be addressed in this proceeding and that parties were ordered to brief those issues, except for one of them, which was resolved by a Commission-approved settlement.

LACMTA points out that the PD states that it will address the issues set for briefing but will not address issues, arguments and/or evidence outside the scope of the proceeding¹⁴⁴ and this is just what the Proposed Decision proceeds to do. LACMTA contends that the City’s three issues are stated very differently than those defined in the Scoping Memo and addressed in the Proposed Decision and to some extent they overlap. LACMTA contends that the City has no grounds to complain that the Proposed Decision has not addressed matters of concern to the City, beyond the defined scope of this proceeding, or has not addressed them in the terms stated by the City. LACMTA asserts that the City did not object to the Scoping Memo on a timely basis and is not entitled to object to the scope of the proceeding now. LACMTA contends that it briefed the issues as defined in the Scoping Memo and that the City briefed a different set of issues, which complicated its task in replying to the City’s opening brief and also

¹⁴² LACMTA Reply Comments to PD at 1.

¹⁴³ *Id.* at 2, citing City of Inglewood Opening Comments to PD at 2.

¹⁴⁴ LACMTA Reply Comments to PD at 2 citing PD at 15.

complicated the ALJ's and the Commission's task in resolving the issues that the Scoping Memo defined but that the Proposed Decision has done so.¹⁴⁵

After reviewing the Comments and Reply Comments to the PD submitted by the City of Inglewood we have determined that the City has failed to demonstrate any material procedural or legal error in the PD. As a result, we decline to make any substantive changes to the PD based on the City's Comments.

We have modified the PD based on the Comments of LACMTA and on our own initiative, in the following manner:

- The first full sentence on page 33 has been modified
- Section 8 has been modified
- Finding of Fact #21 has been modified
- Finding of Facts #28-#33 have been added
- Ordering Paragraph #2 has been modified
- Ordering Paragraphs #4-#14 have been added

There are no other changes to the PD.

Assignment of Proceeding

Commission President, Michael R. Peevey is the assigned Commissioner and W. Anthony Colbert is the assigned ALJ.

Findings of Fact

1. On November 16, 2012, LACMTA filed A.12-11-018, requesting the Commission's authorization in constructing two two-track at-grade crossings for

¹⁴⁵ LACMTA Reply Comments to PD at 2, citing PD at 15-49.

the Crenshaw/LAX Transit Corridor Project Light Rail Line across Eucalyptus Avenue, across Centinela Avenue, and a pedestrian grade-separated crossing all in the City of Inglewood.

2. LACMTA has constructed and is operating several light rail transit and subway lines in Southern California, including the Metro “Blue,” “Green,” “Red,” “Gold” and “Exposition” lines.

3. The proposed Crenshaw/LAX Project is an 8.5 mile rail line that would begin at the southern terminus of the Metro Green Line and follow existing railroad right of way adjacent to Aviation Boulevard and Florence Avenue northeast to Crenshaw Boulevard and the Exposition line.

4. The FCBC filed a Protest to LACMTA’s Application on December 21, 2012.

5. The City of Inglewood filed a Protest to A.12-11-018 on December 31, 2012.

6. On January 10, 2013, LACMTA filed a reply to the protests to the Application.

7. On May 8, 2013 LACMTA and FCBC filed a Joint Motion for Interim Decision approving the Settlement Agreement for a private below grade crossing and easement agreement defining rights and responsibilities for construction, operation, and maintenance of a pedestrian undercrossing and related matters.

8. The City did not oppose the settlement agreement.

9. The City continued to object to the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue.

10. On October 3, 2013 the Assigned Commissioner issued a Scoping Memo and Ruling.

11. On October 31, 2013 the Commission issued, an Interim Decision, D.13-10-061 approving the Settlement Agreement between LACMTA and FCBC.

12. The Interim Decision addresses and disposes of Sub-Issue #4 in the Scoping Ruling.

13. On November 19, 2013 LACMTA filed their opening brief.

14. The City filed its opening brief on November 21, 2013.

15. On December 2, 2013 LACMTA filed their reply brief.

16. The City filed its reply brief on December 2, 2013

17. The City has, for the most part, limited its arguments to the Centinela Avenue crossing which it refers to in its briefs as the Centinela/Florence crossing.

18. The proposed at-grade crossings at Centinela Avenue and Eucalyptus are not inconsistent with the intent of GO 75-D.

19. LACMTA has demonstrated the public need for the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue.

20. LACMTA has made a convincing showing that it has eliminated all potential safety hazards regarding the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue.

21. LACMTA has sufficiently consulted with local community and emergency authorities and the Commission's rail safety staff and has modified the design of the proposed at-grade crossings in response to their.

22. LACMTA has solicited the opinions of the general public and those who may be affected by the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue.

23. LACMTA has conducted a sufficient comparative study of the costs of at-grade crossings at Eucalyptus Avenue and Centinela Avenue with grade-separated crossings for the Project.

24. The proposed at-grade crossings for Centinela Avenue and Eucalyptus Avenue are fully consistent with the Commission's practicability standard as it pertains to light rail crossings.

25. The Project as proposed fits into the overall scheme of public/light-rail transit in the L.A. metropolitan area.

26. LACMTA include in its application a statement describing the signs, signals and/or other crossing warning devices it plans to install at the proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue.

27. A grade separated crossing for Eucalyptus Avenue and/or Centinela Avenue is an optional betterment that would cost in excess of \$50 million.

28. LACMTA is the lead agency, under CEQA, for the Project.

29. The Commission is the responsible agency, under CEQA, for this Project.

30. LACMTA prepared a FEIS/FEIR dated August 2011.

31. The FTA issued a Record of Decision on December 30, 2011.

32. The Commission reviewed and considered LACMTA's Final Environmental Impact Statement/Final Environmental Impact Report and its Supplemental Environmental Assessment.

33. LACMTA's environmental review documents are adequate for the Commission's decision-making purposes as the responsible agency.

Conclusions of Law

1. The proposed at-grade crossings at Eucalyptus Avenue and Centinela Avenue are not inconsistent with the intent of GO 75-D because GO 75-D does not apply to light rail/rapid transit projects in general and the Crenshaw/LAX Project in particular.

2. There are no errors regarding the cost issues and compliance with the Commission's standards of practicability for the at-grade crossings at Eucalyptus

Avenue and Centinela Avenue. The seven practicability criteria were correctly considered and applied in the development of the crossing plans.

3. At-grade crossings are necessary in the design of modern light-rail systems.

4. Hearings are not necessary in this proceeding.

O R D E R

IT IS ORDERED that:

1. The protest of the City of Inglewood to the Application filed by the Los Angeles County Metropolitan Transportation Authority for authorization to construct three crossings: (i) a two-track at-grade track crossing at Eucalyptus Avenue, (ii) a two-track at-grade track crossing at Centinela Avenue, and (iii) a pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line all in the City of Inglewood is denied.

2. The Application filed by the Los Angeles County Metropolitan Transportation Authority for authorization to construct three crossings: (i) a two-track at-grade track crossing at Eucalyptus Avenue, (ii) a two-track at-grade track crossing at Centinela Avenue, and (iii) a pedestrian grade separated crossing (Pedestrian Underpass) near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line all in the City of Inglewood, with the revised crossing diagrams presented in Attachments B and C to the Los Angeles County Metropolitan Transportation Authority's Opening Brief, is approved.

3. We adopt and incorporate by reference the significant environmental impacts and proposed mitigations set forth in the Final Environmental Impact Report regarding the Crenshaw/LAX Transit Corridor Project Light Rail Line.

4. We adopt and incorporate by reference the significant unavoidable impacts set forth in the Final Environmental Impact Report regarding Crenshaw/LAX Transit Corridor Project Light Rail Line.

5. We adopt and incorporate by reference the Findings of Fact in the Final Environmental Impact Report of the Crenshaw/LAX Transit Corridor Project Light Rail Line.

6. The signs, signals and/or other crossing warning devices planned to be installed at the proposed (i) the two-track at-grade track crossing at Eucalyptus Avenue, (ii) the two-track at-grade track crossing at Centinela Avenue, and (iii) the pedestrian grade separated crossing near Eucalyptus Avenue for the Crenshaw/LAX Transit Light Rail Line all in the City of Inglewood are approved.

7. The Los Angeles County Metropolitan Transportation Authority shall provide the Commission's Rail Transit and Crossing Branch, Rail Crossings Engineering Section, of the Safety Enforcement Division finalized engineering crossing designs prior to commencement of construction activities. The Commission's Rail Transit and Crossing Branch, Rail Crossings Engineering Section will evaluate their conformance with the crossing designs approved by this decision.

8. The Los Angeles County Metropolitan Transportation Authority shall comply with all applicable rules, including Commission General Orders and the California Manual on Uniform Traffic Control Devices.

9. The Los Angeles County Metropolitan Transportation Authority shall notify the Commission's Rail Transit and Crossing Branch, Rail Crossings Engineering Section of the Safety Enforcement Division, at least 30 days prior to opening the crossings. Notification should be made to rces@cpuc.ca.gov.

10. Within 30 days after completion of the work authorized by this decision, the Los Angeles County Metropolitan Transportation Authority shall notify the Commission's Rail Transit and Crossing Branch, Rail Crossings Engineering Section of the Safety Enforcement Division, in writing, by submitting a completed Commission Standard Form G (Report of Changes at Highway Grade Crossings and Separations), of the completion of the authorized work. Form G requirements and forms can be obtained at the California Public Utilities Commission web site Form G at <http://www.cpuc.ca.gov/formg> . This report may be submitted electronically to rces@cpuc.ca.gov as outlined on the web page.

11. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not satisfied. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

12. A request for extension of the three year authorization must be submitted to the Rail Crossings Engineering Section of the Commission's Safety Enforcement Division at least 30 days before the expiration of that period.

13. The preliminary hearing determination for this proceeding, of no hearings necessary, is unchanged.

14. Application 12-11-018 is closed.

This order is effective today.

Dated _____, at San Francisco, California.